D.B. CIVIL SPECIAL APPEAL NO.31/2006

21.3.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P.VYAS

Mr.Anil Bachhawat, for the appellant.

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Having heard the learned counsel for the applicant – Insurance Company who has made the application for permitting it to raise issue about quantum of compensation awarded to the successor of the victim Smt. Bina Jain who died because of accident which took place on 25.2.1996.

The Motor Accident Claims Tribunal awarded compensation of Rs.1,77,000/- by considering the return of income at Rs.18,000/- to be basis for allowing compensation. However, the learned Single Judge found that claim of the claimant that the deceased who was lawyer and was earning Rs.3500/- per month was not accepted by the Tribunal, erroneously by not considering the lawyers position and has confined to salary income in return which was paid by her senior to her. The learned Single Judge considering the circumstances of professional and profession for 2-3 years in 1990s has enhanced the

compensation to Rs.4,80,000/-.

No permission was sought at any stage for contesting quantum of compensation as it is not permissible for insurer to join issue on quantum of compensation except with the leave of Court.

The only contention raised before us is that enhanced compensation is grossly unjust. However, from the record, it emerge that the deceased was 36 years of age at the time of her death. She was practising for 3-4 years and she had returned her income by showing the same as Rs.18,000/- as income from salary and Rs.25,093/- as income from sources. Thus, total income of the deceased in the return was above 40,000/-. If the income of the deceased is taken to be Rs.40,000/- and if second schedule appended with the Motor Vehicles Act is applied, it would have entailed compensation of Rs.6,00,000/-. We are referring to the table only to appreciate the contention raised by the learned counsel for the appellant.

The compensation of Rs.4,80,000/- awarded to the successors of the deceased who was 36 years of age and having income of over Rs.40,000/-, compensation of

Rs.4,80,000/- cannot be said to be grossly excessive so as to give a cause for permitting the appellant to raise issue about enhancement of quantum by the learned Single Judge.

Accordingly, the application as well as the special appeal is rejected. No order as to costs.

(R.P.VYAS)J (RAJESH BALIA)J.

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